

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Samuel I. Cox,

Case No. 21-cv-1776 (SRN/TNL)

Plaintiff,

v.

REPORT AND RECOMMENDATION

Commissioner of Department of Human Services, Jane and or John Doe (Department of Human Services Mailroom Supervisor), and Jane/John Doe (Mailroom employee),

Defendants.

IT IS HEREBY RECOMMENDED THAT Cox’s request for a preliminary injunction, Complaint at 5 [ECF No. 1], be **DENIED** without prejudice. Under Federal Rule of Civil Procedure 65(a)(1), a district court “may issue a preliminary injunction only on notice to the adverse party.” There is no indication that Defendants have notice of Cox’s preliminary-injunction request; indeed, Defendants have yet to be served in this action.

Furthermore, while the Court recommends denying Cox’s preliminary-injunction request for procedural reasons—failure to comply with the applicable rules—the Court would have recommended denying the request on substantive grounds even if Cox had complied with the proper procedures. When considering a preliminary-injunction request, district courts in the Eighth Circuit consider the “*Dataphase* factors”: “(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that

movant will succeed on the merits; and (4) the public interest.” *Novus Franchising, Inc. v. Dawson*, 725 F.3d 885, 893 (8th Cir. 2013) (quoting *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981), and applying factors to preliminary-injunction request). Critically, the party seeking a preliminary injunction has the burden of showing such relief’s propriety. *See, e.g., Lankford v. Sherman*, 451 F.3d 496, 503 (8th Cir. 2006) (citing *Watkins, Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003)). Cox’s brief preliminary-injunction request contains no direct discussion of the *Dataphase* factors. *See* Complaint at 5 [ECF No. 1].

Dated: December 13, 2021

s/ Tony N. Leung
 Tony N. Leung
 United States Magistrate Judge
 District of Minnesota

*Cox v. Commissioner of Department of
 Human Services et al.*
 Case No. 21-cv-1776 (SRN/TNL)

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).